

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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EASTERN SAVINGS BANK, FSB,

Plaintiff,

ORDER

10-CV-4503 (ADS) (WDW)

-vs.-

WINSTON PRICE a/k/a WINSTON S. PRICE,

Defendant.

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APPEARANCES:

Kriss & Feuerstein, LLP

Attorneys for the plaintiff

360 Lexington Avenue, Suite 1300

New York, NY 10017

By: Jerold C. Feuerstein, Esq.,
Joseph, C. Voza, Esq. Of Counsel

Winston Price, pro se

P.O. Box 728

Baldwin, NY 11510

SPATT, District Judge.

On September 20, 2011, the Court entered a default against the defendant Winston Price a/k/a Winston S. Price and referred the matter to United States Magistrate Judge William D. Wall for a recommendation as to damages, including reasonable attorney's fees and costs. Subsequently, issues arose with respect to whether the defendant had received proper service and notice of the plaintiff's motion for a default judgment.

As a result, on August 9, 2012, Judge Wall issued a Report and Recommendation ("the Report"), recommending that the Court: (1) vacate the temporary grant of the entry of default against the *pro se* defendant; (2) that the motion for default be denied in its entirety without prejudice to renew; and (3) the plaintiff be permitted to re-serve the *pro se* defendant and re-file the motion, and that the *pro se* defendant be given an opportunity to respond to the motion for default. Despite the fact

that the Court had not yet adopted the Report, on September 5, 2012, the plaintiff renewed its motion for a default judgment. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Wall’s Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Wall’s Report, it is hereby

ORDERED, that Judge Wall’s Report and Recommendation is adopted in its entirety. The Court hereby: (1) vacates the temporary grant of the entry of default against the *pro se* defendant; and (2) denies the motion for default in its entirety without prejudice to renew. Because the plaintiff has already re-filed the motion for a default judgment, the Court hereby grants the *pro se* defendant thirty days from the date of this order to respond to the motion for default, and it is further

ORDERED, that the plaintiff is directed to serve a copy of this order on the *pro se* defendant by personal service and to file a proof of service with the court.

SO ORDERED.

Dated: Central Islip, New York
September 19, 2012

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge